

NEAL & HARWELL, PLC

LAW OFFICES

150 FOURTH AVENUE, NORTH

SUITE 2000

NASHVILLE, TENNESSEE 37219-2408

TELEPHONE

(615) 244-1713

FACSIMILE

(615) 726-0573

RECEIVED

2004 FEB 27 PM 1:39

T.R.A. DOCKET ROOM

AUBREY B. HARWELL, III
W. DAVID BRIDGERS
KENDRA E. SAMSON
MARK P. CHALOS
DAVID G. THOMPSON
CYNTHIA S. PARSON
KELTIE L. HAYS
CHRISTOPHER D. BOOTH
RUSSELL G. ADKINS
ELIZABETH S. TIPPING

OF COUNSEL
JOHN D. CLARKE

JAMES F. NEAL
AUBREY B. HARWELL, JR.
JON D. ROSS
JAMES F. SANDERS
THOMAS H. DUNDON
RONALD G. HARRIS
ALBERT F. MOORE
PHILIP N. ELBERT
JAMES G. THOMAS
WILLIAM T. RAMSEY
JAMES R. KELLEY
MARC T. MCNAMEE
GEORGE H. CATE, III
PHILIP D. IRWIN
A. SCOTT ROSS
GERALD D. NEENAN

February 27, 2004

VIA HAND DELIVERY

Hon. Ron Jones, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN. 37238

Re: Docket Nos. 00-00523

Dear Director Jones:

Enclosed please find an original and fourteen copies of the "BRIEF OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES" to be filed in each of the above-referenced proceeding.

Copies of the "BRIEF OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES" are being provided to each of the parties, as indicated on the attached Certificate of Service. Please direct any questions regarding this filing to me at your convenience.

Sincerely yours,



William T. Ramsey

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

RECEIVED

2004 FEB 27 PM 1:39

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

T.R.A. DOCKET ROOM

DOCKET NO. 00-00523

BRIEF OF THE RURAL INDEPENDENT COALITION

on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

"The Rural Independent Coalition of Small LECs and Cooperatives"

February 27, 2004

**Before the
Tennessee Regulatory Authority
Nashville, Tennessee**

IN RE:)	
)	
GENERIC DOCKET ADDRESSING)	DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE)	
)	
)	

BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Brief in response to the direction of Hearing Officer Ron Jones, Director of the Tennessee Regulatory Authority ("TRA" or "Authority"), at the Status Conference held in the above-referenced proceeding on February 17, 2004. The Coalition membership is comprised of 21 Independent telephone companies and cooperatives which collectively provide approximately 340,000 access lines to customers who reside and work within the more rural areas of Tennessee.

At the February 17 Status Conference, the Hearing Officer requested that the parties address two matters:

1. The Pending July 25, 2003, BellSouth "Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000" (the "BellSouth Motion")¹; and

2. The Pending April 3, 2003 "Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition" (the "Coalition Petition").

In addition, the Hearing Officer asked the parties to identify any additional pending issues and to propose how to proceed.

¹ BellSouth originally filed a Motion on July 15, 2002 and subsequently filed this "Substitute Version "

I. Introduction, Summary and Background

In response to the requests of both BellSouth and the Coalition, the Hearing Officer has held the BellSouth Motion in abeyance since September 4, 2002, and the Coalition Petition in abeyance since May 5, 2003. In an effort to resolve by agreement the issues associated with each of these pleadings, the Parties have held numerous discussions and exchanged both correspondence and proposals. While it is regrettable that the parties have not resolved the underlying issues, the fact is that the most ardent of good faith negotiations does not always resolve disputed differences. The participation of a lawful decision-maker is sometimes required to ensure that order and integrity of process is maintained. In this instance, the Coalition respectfully has concluded that the participation of the TRA is required to address both the pending BellSouth Motion and the Coalition Petition.

- A The pending BellSouth Motion and Coalition Petition are not affected by any changes in law or regulation that have become effective subsequent to the prior filings by the parties addressing these issues.

Although the underlying dispute between BellSouth and the Coalition members involves certain disputed legal issues, neither the BellSouth Motion nor the Coalition Petition is complex. The parties have previously addressed the relevant facts and the relevant law, and the Coalition will not burden the record with repetitive argument.² During the period of time that has elapsed while the BellSouth Motion and the Coalition Petition have been held in abeyance, the Coalition is aware of no change in law that is relevant to the resolution of either.³

² For convenience and ease of reference, the Coalition attaches hereto the August 16, 2002 Reply Brief of the Coalition in response to the BellSouth Motion. Attached to this Reply Brief is the November 9, 2000 Brief of the Coalition in response to the Hearing Officer's request for briefing of Issues 1, 2, and 3 in this generic rural universal service proceeding. The BellSouth Motion addresses only Issue 2. As noted below, BellSouth has previously appealed the decision of the Hearing Officer regarding Issue 1, and that decision was affirmed by the Authority.

³ Should any party suggest in its Brief that any purported change in state or federal law or regulation is relevant to the determination of either the BellSouth Motion or the Coalition Petition, the Coalition will address any such contention in its Reply Brief.

B No dispositive factual issues are in dispute

There are no factual disputes which could otherwise complicate the determination of the pending BellSouth Motion and Coalition Petition. The full record in this proceeding contains all of the facts necessary to the resolution of each. In summary, the facts are as follows.

1. BellSouth has an established physical interconnection of its network with each Coalition member.
2. The physical interconnection between BellSouth and each Coalition member is subject to terms and conditions set forth in agreements between the parties.
3. The physical interconnection of BellSouth to the networks of other carriers is subject to the jurisdiction of the TRA with respect to the transmission of telecommunications services (other than interstate interexchange service)
4. BellSouth wants to change the terms and conditions of the existing arrangements between BellSouth and each Coalition member. The Coalition invested considerable time and effort in the development of new terms and conditions together with a proposed statewide plan to preserve and advance universal service in the areas of rural Tennessee served by the Coalition members. Although the Coalition understood from the negotiations that BellSouth is in agreement with the proposal, discussions between BellSouth and the Coalition reached an impasse. The breakdown in the discussions has occurred because the Coalition members will not commit to alter existing interconnection terms or to request TRA authority to do so in the absence of the implementation of a comprehensive rate design and cost recovery proposal that preserves universal service in rural Tennessee without producing inordinate pressures to increase basic service rates.
5. BellSouth formerly made payments to the Coalition members for the termination of traffic that BellSouth carried on a for-fee basis to the networks of each Independent. Payments were made in accordance with the compensation terms and conditions of the existing contractual arrangements between each Independent and BellSouth. With the approval of the Hearing Officer, the amount of compensation was revised for a three month interim period ending on May 31, 2003 for that traffic that BellSouth identified as originating on a wireless carrier network. With respect to traffic carried subsequent to May 31, 2003, BellSouth has refused to honor the existing arrangement and has made no payment to the Coalition members for the termination of this traffic.

- C. No relevant facts are in dispute, all applicable legal issues have been resolved. The underlying issues raised by the BellSouth Motion and the Coalition Petition have been determined by prior Orders of the TRA and the Hearing Officer; enforcement of the Authority's decision is required

The prior pleadings and Orders in this proceeding fully document the origins of the dispute between BellSouth and the Independents. BellSouth wants to alter the existing interconnection arrangements with the Independents; the Independents do not disagree with the notion that it is mutually advantageous to consider changes in rate design and other interconnection terms and conditions in light of the evolution of both technology and the competitive marketplace.

The initial and fundamental difference between BellSouth and the Independents is with regard to the process and factors that should be considered and addressed in the implementation of any new interconnection arrangements. Within this proceeding, the Coalition has previously addressed the direct relationship of these arrangements and the ability of rural Independents to maintain and advance the objectives of universal service.⁴ The Coalition has urged only that changes in the interconnection arrangements with BellSouth should not be undertaken without consideration of the impact on universal service and that no change should be implemented without TRA approval. It is the understanding of the Coalition that BellSouth would like to treat the terms and conditions of its interconnection with each Independent as a purely commercial contract matter as opposed to a matter that is subject to TRA's rights and obligations regarding the maintenance and fostering of universal service throughout the State of Tennessee.

⁴ In summary, rural Independent service areas generally have geographic and demographic characteristics that result in higher service costs per customer. In order to ensure that the objectives of universal service are met, recognition has been given not only in Tennessee, but at the federal level and throughout the nation, to the fact that all customers benefit from the ability to send and receive telecommunications to and from rural areas. This principle

BellSouth initially sought simply to cancel all existing interconnection terms and conditions with the Independents, and to continue utilization of the physical network interconnection to each Independent without any further financial compensation arrangement. The Coalition argued and demonstrated that the existing terms and conditions of interconnection between BellSouth and each Independent exist under the authority of the TRA, and that the arrangements reflect a reasoned rate design and cost recovery mechanism for rural Independents and their customers that foster the preservation of universal service objectives

In the “Initial Order of Hearing Officer” issued on December 29, 2000, the former Hearing Officer determined that the TRA has jurisdiction over the Settlement Contracts “arrangements” between BellSouth and the Coalition members. In addition, the Hearing Officer ordered that the existing arrangement would remain in place “until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority.”⁵ BellSouth did not like the decision; it appealed to the Authority. On May 9, 2001, the Authority, however, affirmed the Initial Order of the Hearing Officer, stating “BellSouth cannot rely on what it terms ‘private’ contractual provisions to circumvent or avoid its regulatory obligations.”⁶

The Initial Order of the Hearing Officer and the Authority’s Order affirming the Hearing Officer resolved the legal issues that are pertinent to the resolution of both the pending BellSouth Motion and the Coalition Petition:

has traditionally translated into various forms of rate design mechanisms in order to ensure that the public interest of all ratepayers is preserved

5 Initial Order of Hearing Officer, Docket No 00-00523, p 12 It is significant to note that the Hearing Officer determined at footnote 28 of this Order that the arrangement between BellSouth and each Independent is ordered to be maintained “outside of the existing contract ”

6 Order Denying BellSouth’s Petition for Appeal and Affirming the Initial Order of the Hearing Officer, Docket No, 00-00523, p 11

1. The terms and conditions of the interconnection arrangements between BellSouth and each Independent remain in effect; and
2. These term and conditions are in effect by Order of the Authority – not as a matter of contract, but outside of the existing contract.

Neither of these statements is under appeal or review. The legal issues reflected by these statements were rendered by the Hearing Officer and affirmed by the Authority, and each is applicable to the resolution of the pending BellSouth Motion and Coalition Petition.

II. The BellSouth Motion Is Moot and Should Be Dismissed

On June 28, 2002, the Hearing Officer issued an Order addressing “Legal Issues 2 & 3 Identified in the *Report and Recommendation of Pre-Hearing Officer* Filed on November 8, 2000 ” On July 15, 2002, BellSouth initially filed its Motion for reconsideration of this Order. The BellSouth Motion addressed only Issue 2: “Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding?”

In the June 28, 2002 Order addressing Issue 2, the Hearing Officer concluded that “it is lawfully incumbent upon the Authority to consider the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers in the Rural Universal Service Proceeding.”⁷ The Hearing Officer did not suggest that the Independents and BellSouth should view this determination as an indicator that they should cease discussions and negotiation of settlement arrangements, and the Independents certainly did not interpret the Order as any such indicator

Nonetheless, BellSouth filed its Motion regarding only Issue 2. The BellSouth Motion does not seek actual reconsideration of the Hearing Officer’s determination of Issue 2. Instead,

⁷ Initial Order of Hearing Officer, Docket No 00-00523, issued June 28, 2002, p 4

BellSouth sought “clarification” that this Order was not intended to suggest that the parties should not continue to negotiate. In its brief in support of its Motion, BellSouth stated that its “bottom line” is that it seeks relief to ensure “that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements” with the Independents.⁸

In its Reply Brief filed on August 16, 2002, the Coalition noted that BellSouth had been informed by word and deed that each Independent fully understands that the Authority encourages the Independents and BellSouth to discuss, negotiate, and arrive at mutually agreeable terms and conditions.⁹ The subsequent events have demonstrated the factual reality of the Coalition’s statement. Subsequent to the filing of the Coalition’s Reply Brief, BellSouth requested on August 23, 2002 that the BellSouth Motion be held in abeyance to afford the parties the opportunity to negotiate. The request was granted on September 2, 2002.

Thereafter, a series of discussions together with the crafting of new proposals ensued. The parties approached this process in good faith, jointly sought additional continuances of the Order holding the BellSouth Motion in abeyance, and reported continuously in accordance with the schedule established by the Hearing Officer.

The members of the Coalition approached this process with openness and commitment. The Coalition sought to develop consensus toward a new proposal that addresses the concerns of the parties and, most significantly, the overall public interest concerns regarding the maintenance of universal service in the areas of rural Tennessee served by the Independents. The Coalition members are well aware that outside of formal processes and proceedings, other parties may

⁸ Brief of BellSouth in Support of its Motion, August 2, 2002, p. 4

⁹ Reply Brief of the Coalition in Opposition to the BellSouth Motion, August 16, 2002, pp. 2-3

disparage rural independent telephone companies, boldly but unjustly suggesting that the Independents seek only to maintain existing interconnection arrangements for wrongful purposes.¹⁰ Accordingly, the Coalition was intent to demonstrate a creative pro-active approach, and to dispel this false characterization and suggestion that the Independents were in any way slowing the process of implementing any changes that would be rational and serve the public interest.

The Coalition achieved this objective. The facts speak for themselves:

1. In the course of the negotiations that took place between BellSouth and the Coalition, the Independents agreed to implement a BellSouth proposal regarding changes in the terms and conditions pursuant to which private line services are offered.¹¹
2. When BellSouth, contrary to the Authority's mandate to maintain existing interconnection arrangements and payments, arbitrarily ceased payment of termination charges to the Independents for traffic that BellSouth identifies as "CMRS traffic," the Independents strived to reach a compromise and agreed to accept significantly reduced compensation payments for an interim period.
3. The Coalition invested considerable time, resources and effort to develop a consensus proposal incorporating significant reductions in interconnection rates charged to BellSouth; the Coalition understood that it had fully addressed BellSouth's objectives.¹²

The details of the Coalition's proposal to establish new interconnection terms and conditions in a manner that serves the public interest and all reasonable interests of all parties

¹⁰ See, e.g., page 2 of the original BellSouth Motion filed on July 15, 2002 wherein BellSouth acerbically states its belief that the Independents have attempted to prevent BellSouth from terminating existing interconnection arrangements in order "to continue to benefit from an unintended 'gravy train' flowing from these outdated contracts."

¹¹ It is the understanding of the Coalition, however, that BellSouth has not yet elected to seek TRA approval to implement the changes BellSouth proposed and to which the Independents agreed.

¹² In the most recent discussions with BellSouth prior to the February 17 Status Conference, BellSouth representatives indicated a new demand, insisting that the Independents commit to a date certain by which they would reduce interconnection rates charged to BellSouth irrespective of whether or not other aspects of the Coalition proposal addressing universal service considerations were implemented. The Coalition refused to agree to BellSouth's demand, and maintain that in light of the affirmed and standing Orders in this proceeding, they cannot and should not agree to this demand. As a result, the parties reported accordingly to the Hearing Officer at the February 17 Status Conference, indicating the break-down of discussions.

may properly become the subject of future aspects of this generic rural universal service proceeding. At present, however, consideration is focused only on the BellSouth Motion. The relief sought by BellSouth is very limited. By its Motion, BellSouth sought only clarification that “the termination or renegotiation” of the contracts between BellSouth and each Independent “need not be postponed.”¹³

The BellSouth request is moot. There is no need to clarify that the Initial Order of the Hearing Officer addressing Issue 2 was not intended to discourage the parties from negotiating. The BellSouth Motion was held in abeyance, and the parties did negotiate. Nor is there any need to address whether the contract may be terminated pending the conclusion of this proceeding. Termination of the contract is no longer a relevant legal matter. BellSouth has already purported to terminate the contract. As a matter of law, the Hearing Officer determined, and the Authority affirmed, that the terms and conditions set forth in the existing “terminated” agreements are to be maintained in the “arrangement, outside of the existing contract.”¹⁴ The matter has been decided. The decision has been affirmed. There is no need to decide whether BellSouth may terminate the contract. The matter is moot as a result of the enforcement of the standing and affirmed December 29, 2000, Order of the Hearing Officer which is not, and should not be, brought under review for a second time by the BellSouth Motion.¹⁵

13 BellSouth Motion, p. 3

14 Initial Order of Hearing Officer, December 29, 2000, at fn. 28

15 The BellSouth Motion also requests “clarification” of the Hearing Officer’s statement at page 4 of the June 28, 2002 Initial Order of Hearing Officer that “the Tennessee Public Service Commission directed BellSouth Telecommunications, Inc. (“BellSouth”) to enter into toll settlement arrangements that were structured in a manner that enabled independent carriers to maintain their current revenue streams.” BellSouth seeks reconsideration of “the portion of the order based on this presumption.” This statement however is anecdotal, and not dispositive, the request is moot and should be denied. No portion of the Order was based on the specific presumption in the quote cited out of context by BellSouth. To the contrary, the Order was based on the irrefutable fact that there has been a “very strong connection between the contribution that the toll settlement arrangements provide to rural carriers and their ability to maintain affordable residential services.” Initial Order of Hearing Officer, June 28, 2002, p. 4

III. The Coalition Petition Should be Granted; It Merely Seeks Enforcement of the Standing Orders Issued in this Proceeding.

The Coalition will not burden the record by repeating in total the facts and applicable law set forth in the Coalition Petition filed on April 3, 2003. In summary, BellSouth has decided that it no longer should have to pay the Independents for any traffic terminated by BellSouth on any Independent's network if BellSouth identifies the traffic as "CMRS" traffic. Prior to implementation of this unilateral BellSouth policy decision, BellSouth purports that it did compensate the Independents for the termination of this traffic in accordance with the terms and conditions of the existing settlement agreements. No question of fact or law exists. BellSouth did make payments to the Independents for this traffic pursuant to the terms and conditions of these agreements.¹⁶ The terms of these settlement agreements (which are now maintained under "arrangements" outside the existing contract, as discussed above) are the only terms and conditions pursuant to which BellSouth operates in Tennessee with respect to its intrastate interconnection to each Independent.¹⁷

Whether or not a specific order of the former Tennessee Public Service Commission is identified that addresses this concept, the fact remains that the settlement arrangements have, with the Authority's knowledge and oversight, produced a portion rural independent cost recovery that, in turn, reduced pressures to otherwise increase the basic rates charged by the rural Independents to rural customers for basic service.

16 The Coalition notes that with respect to several of the Independents, an issue exists with regard to whether BellSouth made full payments due to each Independent for the termination of this traffic. Although the Independents understood that the negotiation discussions held while the BellSouth Motion and Coalition Petition were in abeyance would include negotiations to settle these claims, no meaningful responses to the Independent claims have taken place. Each of the claiming Independents reserves its rights to pursue these claims in all appropriate forums.

17 Contrary to any "red herring" argument any party may attempt to assert, the fact that the subject traffic carried by BellSouth to the Independent networks for termination may be "CMRS" traffic is irrelevant with respect to existing arrangements, terms and conditions. BellSouth has apparently entered into bi-lateral agreements with CMRS carriers to provide those carriers with indirect connectivity to the Independent networks. BellSouth and the Independents have existing terms and conditions, originally set forth in the settlement agreements, which govern BellSouth's termination of traffic on Independent networks. There exists no law or regulation, and no party can point to any order, that automatically overrides the established and effective terms. BellSouth could have come to the Independents and asked to negotiate new terms and conditions for this specific subset of traffic; it did not. BellSouth instead elected self-help in defiance of an existing Authority Order.

In order both to demonstrate the willingness of the Independents to negotiate and compromise, and to avoid the expense of protracted legal proceedings, the Independents reached an interim agreement with BellSouth pursuant to which BellSouth paid each Independent a significantly reduced interconnection fee with respect to traffic that Bellsouth identifies as "CMRS traffic." As the Hearing Officer is aware, the interim arrangement between BellSouth and the members of the Coalition ended on July 31, 2003.

The parties have previously reported in jointly filed status reports that new interim offers have been exchanged and that the parties have discussed these offers. The Coalition regretfully reports that it is unlikely that agreement or resolution of this matter can be reached between the parties in the absence of action by the TRA. Prior to May 1, 2003, the parties treated the subject interconnection arrangements and traffic in accordance with existing terms and conditions established between BellSouth and the Coalition members. The subject traffic may likely in the future become subject to new terms and conditions as a result of the negotiations and arbitrations that are ongoing pursuant to Sections 251 and 252 of the Telecommunications Act and in accordance with the Hearing Officer's directive in this proceeding. The new terms and conditions will become effective as a result of agreement or arbitration consistent with the requirements of the Telecommunications Act, and consistent with the affirmed Initial Order of the Hearing Officer in this proceeding that all existing terms and conditions be maintained "until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority."¹⁸

In the spirit of additional compromise, the Coalition has proposed to agree to continue to utilize the interim arrangement until such time as the TRA has approved new terms and

18 Initial Order of Hearing Officer, Docket No 00-00523, December 29, 2000, p 12

conditions applicable to the subject traffic and consistent with the processes established by Sec. 252 of the Telecommunications Act. This offer has been rejected.

As a result, the Coalition members should have every right to enforcement of the terms and conditions of the existing arrangements, the very relief initially sought in the April 3, 2003 Petition. The requested relief is consistent with applicable law and merely seeks enforcement of the prior order of the TRA affirming the Initial Order of the Hearing Officer issued on December 29, 2000.

The Coalition members remain willing to pursue the continuation of the prior compromise during the time period remaining through December 31, 2004 or until new terms and conditions are reached.¹⁹ In the absence of agreement to continue this compromise arrangement, however, the Coalition members have not and will not waive their rights.²⁰ Accordingly, the Coalition members respectfully request that the TRA no longer hold the April 3, 2003 Petition in abeyance, and further request consideration of the Petition and grant of the relief requested. Finally, the Coalition respectfully urges that the Hearing Officer act expediently on this request. Since August 1, 2003, the Coalition members have received no compensation for the interconnection and termination services provided to BellSouth for CMRS traffic that BellSouth has elected to interconnect to the Coalition member networks.²¹

19 The Coalition respectfully notes that the compromise it has proposed is similar to the terms and condition reached in other states in which BellSouth operates. A copy of one such compromise settlement agreement was filed in this proceeding by the Coalition as an attachment to the Coalition's Response to the Petitions for Arbitration filed by several CMRS carriers. For some unknown reason, BellSouth and the CMRS carriers refuse to enter into similar agreements with the Coalition members.

20 The final offer to address this issue made by BellSouth incorporated a further reduced fee and insistence that BellSouth would not be responsible for payment to any Independent for the subject traffic carried after March 31, 2004. This proposal leaves the Independents in limbo and in a situation far short of those compromise arrangements reached in other States.

21 The situation for the Coalition members is worse than it may at first appear. In fact, payment has ceased with respect to the traffic that was interconnected to the networks of the Coalition members after May 31, 2003. The interim agreement applied only to "payments" made through July 31, and not to traffic sent through July 31.

IV. CONCLUSION

During the period in which the BellSouth Motion and the Coalition Petition have been held in abeyance, the Coalition has actively committed resources to the resolution of all immediate and underlying issues. A review of the proposals that have been offered and discussed will demonstrate the substance of the commitment undertaken by the Independents. Unfortunately, the discussions among the parties have not resulted in resolution. The Coalition respectfully requests that the TRA resolve both the BellSouth Motion and the Coalition Petition.

As discussed above, the Coalition asks that the BellSouth Motion be dismissed. The relief requested was limited to clarification that the Authority encouraged continued negotiations among the parties and that BellSouth could terminate the subject settlement agreements. The negotiations have continued, and pursuant to an affirmation by the TRA of the December 29, 2000 Initial Order of the Hearing Officer, the terms and conditions of the settlement agreements purportedly terminated by BellSouth are maintained by Authority Order outside of the contracts. The BellSouth Motion is moot and should be dismissed.

The Coalition also requests that the Authority grant the Coalition Petition. The Independents have not been paid for any of the subject traffic carried by BellSouth to the Independent networks after June 1, 2003. BellSouth's refusal to pay is in direct violation of the Authority's Order. The termination of the traffic is subject by Authority Order to the terms and conditions set forth initially in the settlement agreements, and pursuant to which BellSouth made payments for this traffic until May 2003. The Coalition members have offered to continue the now long ago expired interim settlement arrangement, but BellSouth has refused this offer. Accordingly, the Coalition respectfully urges the grant of its Petition. The Authority should, indeed must, enforce its Orders and rulings issued in this proceeding. The Authority has spoken.

the existing terms and conditions of interconnection, including rates, between BellSouth and each Independent are to be maintained until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority

Respectfully submitted,

NEAL & HARWELL, PLC

By: Wm J Ramsey
William T. Ramsey
John D. Clarke

2000 One Nashville Place
150 Fourth Avenue North
Nashville, Tennessee 37219
(615) 244-1713 Telephone
(615) 726-0573 Facsimile

KRASKIN, LESSE & COSSON, LLC

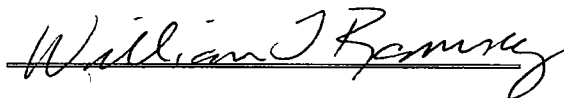
By: Stephen Kraskin (by wire)
Stephen G. Kraskin

Kraskin, Lesse & Cosson LLC
2120 L St. N.W. Suite 520
Washington, D.C. 20037

Counsel for The Tennessee Rural Independent Coalition

CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that a true and correct copy of the foregoing has been served on the parties of record indicated below via U.S. Mail and via electronic mail.



Russ Minton, Esq
Citizens Communications
3 High Ridge Park
Stamford, Connecticut 06905

Henry Walker, Esq.
Jon E Hastings, Esq.
Boult, Cummings, et al.
PO Box 198062
Nashville, Tn. 37219-8062

James Wright, Esq
Sprint
14111 Capitol Blvd
NCWKFR0313
Wake Forest, North Carolina 27587

J Gray Sasser
J Barclay Phillips, Esq
DanElrod, Esq
Miller & Martin
1200 One Nashville Place
150 Fourth Avenue North
Nashville, Tn 37219

James Lamoureux, Esq.
AT&T
1200 Peachtree St. N.E.
Atlanta, Ga 30309

Donald L Scholes
Branstetter, Kilgore, et al
227 Second Ave. N.
Nashville, Tn 37219

Timothy Phillips, Esq
Office of the Tennessee Attorney General
PO Box 20207
Nashville, Tn 37202

Guy M Hicks, Esq.
Joelle Phillips, Esq
BellSouth Telecommunications, Inc.
333 Commerce St , Suite 2101
Nashville, Tn 37201-3300

Certificate of Service, Page 2

R. Douglas Lackey, Esq.
J. Phillips Carver, Esq
Parkey Jordan, Esq.
BellSouth Telecommunications, Inc.
675 W. Peachtree St N.W. Suite 4300
Atlanta, Ga 30375

Elaine Critides, Esq.
John T Scott, Esq.
Charon Phillips, Esq.
Verizon Wireless
1300 I Street N W
Suite 400 West
Washington, D C 20005

Paul Walters, Jr , Esq
15 East 1st Street
Edmond, Ok. 73034

Suzanne Toller, Esq
Davis Wright Temaine
One Embarcadero Center #600
San Francisco, Calif 94111-3611

Beth K. Fujimoto, Esq
AT&T Wireless Services, Inc.
7277 164th Ave , N E.
Redmond, Wa 90852

Monica M Barone, Esq.
Sprint
6450 Sprint Parkway
Overland Park, Ks 66251

Mr. Tom Sams
Cleartalk
1600 Ute Ave.
Grand Junction, Co. 81501

Dan Menser, Esq.
Marin Fettman, Esq
c/o T Mobile USA, Inc.
12920 SE 38th St
Bellevue, Wa. 98006

Mark J Ashby
Cingular Wireless
5565 Glennridge Connector
Suite 1700
Atlanta, Ga. 30342

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

02 16 PM 3 43

DOCKET NO. 00-00523

REPLY BRIEF OF THE RURAL INDEPENDENT COALITION
IN OPPOSITION TO THE BELL SOUTH TELECOMMUNICATIONS, INC.
MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE,
CLARIFICATION OF THE INITIAL ORDER OF THE HEARING OFFICER FOR
THE PURPOSE OF ADDRESSING LEGAL ISSUES 2 AND 3 IDENTIFIED IN THE
REPORT AND RECOMMENDATION OF THE PRE-HEARING OFFICER FILED
IN NOVEMBER 8, 2000

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Reply Brief in response to the above-referenced filing by BellSouth Telecommunications, Inc. ("BST") for reconsideration or clarification (the "BST Motion"). The Coalition submits, as demonstrated below, and by the attachments hereto, that the BST Motion should be denied. No basis exists in law or fact to warrant reconsideration of the

¹ The Coalition includes the following companies: Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange, Inc., Crockett Telephone Company, Inc., Dekalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc., Humphreys County Telephone Company, Loretto Telephone Company, Inc., Millington Telephone Company, North Central Telephone Cooperative, Inc., Peoples Telephone Company, Tellico Telephone Company, Inc., Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc., and Yorkville Telephone Cooperative.

prior determinations by the Hearing Officer in this proceeding.² Nor is action on the BST Motion required to clarify the Hearing Officer's determinations.

I. The BST Motion Should Be Denied. The Independents Have Expressed and Demonstrated Continued Willingness to Negotiate Interconnection Arrangements and Services with BST. Accordingly, the Requested Relief is Unnecessary.

BST emphatically states in its Motion that its "bottom line" is that it seeks relief to ensure

² Subsequent to the November 9, 2000 filing of the Initial Brief of the Rural Independent Coalition (the "Independent November 9, 2000 Brief") in this proceeding, there has been no change in fact or law that would warrant or require reconsideration or clarification of the determinations by the Hearing Officer. As discussed above, clarification by the TRA is not necessary to encourage good faith negotiation by the Independents with BST. The Independents fully recognize, as should BST, that good faith negotiation may not yield mutually agreeable results, and that any party (i.e, BST or an Independent or group of Independents) may seek further guidance from the TRA in the context of the Authority's jurisdiction over BST's provision of intrastate toll services and intrastate interconnection with other carriers. The position of the Independents is consistent with the prior state regulatory decisions, statute and the determinations of the Hearing Office in this proceeding. The factual and legal support with respect to these matters are fully set forth in the Independent November 9, 2000 Brief. Rather than repeat these discussions, the Coalition incorporates them herein by reference and attaches a copy of the November 9, 2000 Brief for the Authority's reference. See Attachment A.

“that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements” with the Independents. (BST Brief at p. 4). Additional imposition on the processes of the Authority to reconsider or clarify this matter is wholly unnecessary. The Independents have informed BST by word and deed that each Independent fully understands that the Authority encourages the Independents and BST to discuss, negotiate, and arrive at mutually agreeable terms and conditions with respect to the provision of intraLATA toll services. The Independents have met with BST to discuss these matters and continue in their willingness to do so.

Accordingly, and to the extent that the intent of the BST Motion is simply the “bottom line” as articulated by BST and referenced above, there is no need for further action on the BST Motion. The Independents have reiterated their willingness to discuss and negotiate the issue raised by BST, and clarification of the Authority’s intent in this regard is not required. The Coalition notes, for the information of the Authority, that on July 15, 2002, the very day that BST first filed its Motion, a meeting between BST representatives and many Independents had already been scheduled as a follow-up to a meeting held in May. Irrespective and contrary to this fact, BST wrongly averred in the initial rendition of its Motion:

the independent companies have been unwilling to renegotiate the arrangements...

(Initial BST Motion filed July 15, 2002, p. 2.)³ The Independents assume that within the BST organization, information regarding the Independent willingness to continue to negotiate may not have been communicated. At this juncture, however, no question should exist. No reason in law

³ While the Coalition recognizes that BST filed a “Substitute Version” of its Motion on July 25, 2002, the Coalition is not in receipt of any document or statement by BST that recants or addresses the incorrect impressions and unconscionable inflammatory language BST incorporated in the initial filing of its Motion.

or fact exists for action by the Authority on the BST Motion.

II. The Independents are Concerned that the BST Motion and Supporting Brief, in the Best Light, May be Characterized as Providing an Inaccurate Impression.

The Coalition respectfully raises for the Authority's consideration its concern that numerous statements in the BST Motion and the BST Brief provide what, at best, may be characterized as an incorrect portrayal of the historic and existing relationship between BST and the Independents. If the BST Motion is simply intended, as stated by BST, to ensure "that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements," the Coalition respectfully submits that BST can and should withdraw its request, as demonstrated in Section I, above. If, however, BST insists on pursuing its Motion, the Independents respectfully request that the Authority schedule a hearing and request testimony by BST to support the broad allegations and misleading factual statements incorporated into its Motion and Brief.

While no new matter of fact or law has arisen that warrants the BST requested reconsideration or clarification, the Coalition notes the existence of a non-dispositive fact that may provide context for BST's motivation in filing its Motion. Although the Independents had not heard officially from BST with respect to any discussion or consideration of changes in interconnection arrangements for a long period of time, on April 5, 2002, BST abruptly notified the Independents of its intent to change the existing arrangements and to act unilaterally in the event that change satisfactory to BST did not occur. (See Correspondence of April 5, 2002, from BST to Independents, Attachment B). The Independents were particularly surprised by the BST

pronouncements in consideration of the fact that BST had opposed the Independents in their attempt to facilitate additional consideration of all related issues by the industry and the Authority. (See, Coalition Letter of September 4, 2001 to Director Malone, Attachment C). Nonetheless, the Independents responded to BST, and offered to meet to discuss any and all issues. (See, Correspondence of April 27, 2002 from Independents to BST). As discussed above, the Independents subsequently met with BST and remain ready, willing, and able to do so.

The Independents are concerned, however, that the portrait painted by BST in its Motion and Brief are far different from these facts. The Independents are equally concerned with many of the statements set forth in the BST Motion and Brief which are presented as fact. The concern of the Independents reaches far beyond offense to the inflammatory and unnecessary language used by BST in its Initial Motion filed July 15. The Independents are concerned that the BST documents do not accurately convey the historic or existing arrangements and relationship between BST and the Independents with respect to the provision of intraLATA toll services in the Independent areas.

The Independents have elected to not utilize this filing to identify each and every statement by BST that generates concern that the Authority be provided with a full and accurate picture. In fact, the Authority holds within its institutional knowledge an understanding of the inaccurate understanding of these matters that may be conveyed by the BST Motion and Brief. Rather than engage in what may be unnecessary debate, the Independents will refrain from further comment on this matter pending BST's decision regarding the Independent proposal that BST withdraw its Motion, and that all parties continue to discuss and negotiate the related matters, as the Independents have expressed willingness to do and as BST has expressed to be the objective of their filing. In the event that BST does not withdraw its Motion, the Independents respectfully

request the opportunity to supplement this Brief, and further request that the Authority establish a hearing on this matter and require BST to provide testimony in support of its Motion and Brief.

CONCLUSION

For the reasons set forth above, the Independents request that BST withdraw its Motion. *The Independents have been and remain willing to discuss and to negotiate all issues associated with interconnection and other service arrangements with BellSouth.* In the event that BST does not withdraw its Motion, the Independents respectfully request that the Authority dismiss the Motion. In the alternative, the Independents request the opportunity to supplement this Brief and request that the TRA establish a hearing on this matter and require BST to provide evidence and testimony in support of its Motion and Brief.

Respectfully submitted,

The Tennessee Rural Independent
Telephone Company Coalition

By:

August, 16, 2002

Stephen G. Kraskin
John B. Adams

CONCLUSION

For the reasons set forth above, the Independents request that BST withdraw its Motion *The Independents have been and remain willing to discuss and to negotiate all issues associated with interconnection and other service arrangements with BellSouth.* In the event that BST does not withdraw its Motion, the Independents respectfully request that the Authority dismiss the Motion. In the alternative, the Independents request the opportunity to supplement this Brief and request that the TRA establish a hearing on this matter and require BST to provide evidence and testimony in support of its Motion and Brief.

Respectfully submitted,

**The Tennessee Rural Independent
Telephone Company Coalition**

By: Stephen G. Kraskin

Stephen G. Kraskin
John B. Adams

August, 16, 2002

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
202-296-8890

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

DOCKET NO. 00-00523

BRIEF OF THE RURAL INDEPENDENT COALITION

on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
Dekalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

"The Coalition of Small LECs and Cooperatives"

November 9, 2000

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

DOCKET NO. 00-00523

BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Brief in response to the direction established by the Tennessee Regulatory Authority ("TRA" or "Authority") at the Status Conference held in the above-referenced proceeding on October 31, 2000. The Coalition membership is comprised of 20 Independent telephone companies and cooperatives which collectively provide approximately 314,000 access lines to customers who reside and work within the more rural areas of Tennessee.

Introduction

The Authority has requested that the parties address three threshold issues:

1. Does the TRA have jurisdiction over the toll settlement arrangements between BellSouth and the Rural Local Exchange Carriers?
2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?
3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated companies, as such companies are defined under state law?

Meaningful consideration and understanding of these issues, on both an individual and collective

basis, is vital to each of the Independents and their respective abilities to sustain and foster the provision of universal service in the rural areas of Tennessee. In their Comments filed in this proceeding on September 5, 2000, the Independents addressed both the short and long term adverse impact on universal service that would result from the arbitrary and isolated termination of settlement agreements between the Independents and BellSouth.

From a policy perspective, universal service concerns for rural Tennessee ratepayers mandates an affirmative response to each of the issues set forth by the TRA. The Authority and all participating parties are well aware that the opportunity to recover the costs of providing universal service in rural Tennessee has traditionally depended significantly on the contribution to cost recovery that each Independent receives from the division of intrastate intraLATA toll revenues with BellSouth. While the Independents and BellSouth historically entered into negotiated division of revenue settlement arrangements, the TRA (and its predecessor) held ultimate authority to be utilized if and when necessary to ensure that the public interest was fully served in the establishment of through rates among the connecting carriers.

Because of the historic dependence on settlements as an integral part of overall cost recovery for the rural Independents, the proposed withdrawal of the toll settlements and the resulting impact on universal service cannot be ignored. Accordingly, in their September 5, 2000, Comments the Independents offered a comprehensive state rate redesign and universal service plan that would appropriately incorporate consideration of BellSouth's proposed termination of the settlement agreements. In addition, the Independents asked the Authority to take emergency action to continue the existing settlement agreements pending the consideration of the Independents' universal service and rate redesign proposal in this proceeding. Absent action by the Authority or significant increases in rural Independent service rates, BellSouth's unilateral

termination of the settlement agreements will severely impact the cash flow and continuing operational viability of rural Independents.

Accordingly, and as more elaborately discussed in the Coalition's September 5, 2000 Comments, public policy interests require: 1) that the TRA holds authority over BellSouth's settlement arrangements for through rates for intraLATA toll service that has been provided by BellSouth and the Coalition Members; 2) consideration in this proceeding of the significant impact of BellSouth's proposed termination of the settlement agreements on the provision of universal service; and 3) application, as a matter of policy, of the state Universal Service statute to the rural rate of return regulated companies in order to meet the objective of universal service in rural Tennessee. These three threshold issues require an affirmative response, however, not only as a matter of public policy, but also as a matter of law, as discussed below.

Issue I: Does the TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?

The TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers. Several sections of Title 65 of the Tennessee Code Annotated confer general jurisdiction upon the TRA. The TRA's jurisdiction over toll settlement arrangements, which are a historical form of universal service cost recovery, is especially certain in the context of revising the Tennessee Universal Service mechanism.

The TRA's jurisdiction over toll settlement arrangements is not, however, derived solely from its consideration of appropriate Universal Service mechanisms. TCA 65-5-201 provides in part that:

The [TRA] has the power . . . to fix just and reasonable individual rates, *joint rates*,

tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates, which shall be imposed, observed, and followed thereafter by any public utility.

TCA 65-5-201. The authority to regulate joint rates necessarily includes authority over the division of those rates between or among the jointly providing carriers as well as authority over the facilities those carriers use to provide the service. The TRA's jurisdiction over toll settlement arrangements is further evidenced by the last sentence of TCA 65-5-201, which states:

In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the [TRA] shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

An examination of the adequacy and efficiency of a jointly provided service necessarily includes an examination of the way the service is provided, the facilities used, and the compensation due each joint provider.

The Authority's jurisdiction over the settlement arrangements between BellSouth and the Independents is further demonstrated by the responsibility assigned to the TRA by the state Universal Service statutory provisions. TCA 65-5-207 grants the TRA broad authority to craft a new universal service mechanism designed for a competitive market. After stating its goal of the continuation of Universal Service to all residential customers and the continuation of carrier-of-last-resort obligations,⁴ the Legislature mandated that the TRA investigate existing and alternative Universal Service mechanisms.⁵ As part of this investigation, the TRA is to "determine all current

⁴ TCA 65-5-207(a).

⁵ TCA 65-5-207(b).

sources of support for universal service and their associated amounts.”⁶ Toll settlement arrangements have long been used as a means of recovering the cost of the operations of independent local exchange carriers (LECs) to ensure their continued provision of universal service and fulfillment of carrier-of-last-resort obligations. Thus, the TRA has jurisdiction over toll settlement arrangements.

TCA 65-5-207(c) explicitly supports this conclusion. It states in part that:

The [TRA] shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, *be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider.*

TCA 65-5-207(c) (emphasis added). The italicized text highlights two essential points. First, the Legislature believes that some “unwarranted subsidization” may exist in the current mechanisms utilized to achieve universal service. Second, the Legislature intends that the TRA must consider existing inter-carrier service arrangements in crafting a new universal service mechanism. As addressed by the Independents in their September 5, 2000 comments, access charge levels and toll settlements are the two primary sources of inter-carrier revenues for the Independents. Subsection (c) makes clear that the TRA must consider these toll settlement arrangements in revising the Tennessee Universal Service mechanism and to end those inter-carrier arrangements that it may deem unwarranted. Implicit in this charge to the TRA is the understanding of the Authority’s jurisdiction over the inter-carrier settlements.

The Legislature did not stop there, however. It went on in other portions of subsection (c) to further clarify its intent. Subsection (c)(5) provides for a rebalancing of rates to correct for the

⁶ TCA 54-5-207(b).

financial impact on a universal service provider of a change in the universal service support mechanism, such as the impact on the Coalition members of changes to their toll settlement arrangements with BellSouth. Subsection (c)(7) prohibits the TRA, however, from increasing rates for "interconnection services" as a part of rate rebalancing. Interconnection services are defined in TCA 65-4-101(f) as "telecommunications services, including intrastate switched access service, that allows a telecommunications service provider to interconnect with the networks of all other telecommunications service providers." According to TCA 65-4-101(c), "telecommunications service provider" includes incumbent local exchange carriers. Thus, toll arrangements between two incumbent LECs are included in the kinds of interconnection services over which the TRA has jurisdiction.

Even if the Legislature had not specifically contemplated TRA jurisdiction over the BellSouth settlement agreements with the Independents, the authority would, nonetheless, hold authority and responsibility for these arrangements. The very essence of the public utility nature of the intraLATA toll service provided by the Independents and BellSouth is precisely that which the Legislature has entrusted to the Authority. The TRA has "general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter." Thus, the TRA has jurisdiction over toll settlement arrangements to the extent necessary: 1) to regulate joint rates, including the adequacy and efficiency thereof, and the resulting settlement arrangements; and 2) to consider the toll settlement arrangements and proposed changes in the context of the Authority's investigation of the existing Universal Service mechanisms and the implementation of new Universal Service mechanisms for the Coalition members.

Issue II: Should the withdrawal of toll settlements agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?

The withdrawal of toll settlements agreements between BellSouth and the Independents not only should, but must, be considered in the Rural Universal Service proceeding. As discussed regarding Issue I, the TRA is required to identify all current sources of universal service funding and to determine the extent to which existing inter-carrier arrangements to support universal service should be continued.⁷ The toll settlement arrangements at issue precisely meet the Legislative mandate for consideration in this proceeding. Toll settlements are a historical form of Universal Service support to the Independents, and take the form of inter-carrier payments. In this regard, toll settlements and the rate levels established for intrastate access charges are similar traditional universal service mechanisms that have been established as integral parts of traditional rate and cost recovery design for rural carriers. The objective of the rate design and universal service cost recovery mechanisms have been to promote universal service connectivity to rural subscribers. In accordance with both the statute and sound public policy, changes in toll settlement arrangements must be considered in revising the Tennessee Universal Service mechanism together with consideration of other inter-carrier arrangements, including access charge levels.

With respect to the issue of how toll settlement arrangements should be considered in this proceeding, the Coalition respectfully suggests that the TRA's consideration should, consistent with the statutory requirements, focus on the following objectives:

⁷ See TCA 65-5-207(b) and (c).

- (1) Identifying toll settlements as a source of Universal Service cost recovery;
- (2) Determining whether, and to what extent, continuation of those toll settlement arrangements as a form of Universal Service cost recovery is warranted; and
- (3) Identifying an alternative form of Universal Service cost recovery mechanism to replace the Universal Service cost recovery provided by toll settlement arrangements if the TRA finds that continuation of those arrangements is not warranted.

The Independents have incorporated these objectives into the comprehensive state universal service and rate redesign plan set forth in their September 5, 2000 comments.

Issue III: Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?

From both a legal and policy perspective, the state Universal Service statute must apply to rate of return regulated rural companies. Consistent with both the state statute and the federal Telecommunications Act,⁸ principles and policies relating to the provision of universal service must be applicable to all local exchange carriers that are designated as providers of universal service. Accordingly, no provision of TCA 65-5-207 suggests that it applies only to a particular class of carrier on the basis of the way in which a carrier is regulated. Instead, the opposite is true.

The first sentence of the statute expresses the Legislature's intent to preserve Universal Service to all residential customers and to continue carrier-of-last resort obligations.⁹ These goals cannot be

⁸ 47 USC § 254.

⁹ TCA 65-5-207(a).

achieved by applying universal service principles and policies only to carriers operating pursuant to a particular form of regulation (e.g., price regulation) and not to those operating pursuant to another (e.g., rate of return).

Further support for application of the Universal Service statute to all carriers can be found throughout the statute itself. Subsection (b) mandates that the TRA “determine all current sources of support for universal service,” not just those for price-regulated companies. Similarly, subsection (c) requires fairness to “all telecommunications service providers.” Subsection (8)(i) requires the TRA to consider the difference between the costs of providing services and the revenue received from providing services, including the cost associated with carrier-of-last-resort obligations, for both “high-density and low-density service areas.” The reference to “low-density service areas” is clearly a direct reference to rural areas, which tend to have low population density and low customer density, and are generally served by the Coalition members. Further, this language is an alternative way of saying “all service areas” in that the phrase “high-density and low-density service areas” may be read to include the whole universe of service areas, with high density service areas and low-density service areas being subsets of the whole.

TCA 65-5-207 applies on its face to all carriers, including rural rate-of-return carriers. Any other reading is contrary to the clear meaning of the statute and to the clear legislative goals stated therein. An interpretation that would exclude any rural incumbent universal service provider would not be competitively neutral, and accordingly, any such interpretation would constitute a violation of both the statute itself¹⁰ and federal law.¹¹

¹⁰ TCA 65-5-207(c)(4).

¹¹ 47 U.S.C. § 254(f).

Conclusion

The Independents respectfully recognize that the Authority has identified three threshold issues that must be addressed and answered expediently in order to go forward in this proceeding. In the absence of clarity in the resolution of these issues, the Independents are concerned that the efforts of the parties and the Authority to address universal service concerns in the areas of the state served by the Independents could be exposed to misfocused, distracting, and otherwise unnecessary debate. From the perspective of both policy and law: 1) the TRA clearly has jurisdiction over BellSouth's settlement agreements with the Independents; 2) the toll settlements must be considered in any meaningful review of state universal service policies for the rural service areas; and 3) the state Universal Service statute must apply to all Tennessee providers of universal service, including the rural rate of return carriers.

Universal service cost recovery for the Independents has historically been achieved through rate design and cost recovery that balanced basic service rates with toll settlement and access revenues. Any change in any aspect of the design will impact the provision of universal service. The Independents respectfully request that the Authority take immediate action necessary to ensure the continuation of the existing balance pending its consideration of the comprehensive proposal set forth by the Coalition.

Respectfully submitted,

**The Tennessee Rural Independent
Telephone Company Coalition**

By:

Charles B. Welch, Jr.
Farris, Mathews, Branan, Boboango & Hellen
618 Church Street, Suite 300

Nashville, Tennessee 37219
615-726-1200

Of Counsel
Stephen G. Kraskin
John B. Adams

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
202-296-8890

ATTACHMENT B

@ BELLSOUTH

BellSouth Telecommunications, Inc.
Suite 34801
876 West Peachtree Street, NE
Atlanta, Georgia 30378

Jerry Hendrix

April 5, 2002

Mr. Levoy Knowles
Ben Lomand Rural Telephone
P. O. Box 670
McMinnville, Tennessee 37110

Dear Mr. Knowles:

As you know, the IntraLATA Toll Settlements Contracts between our companies implemented some years ago intended that BellSouth would function as a primary carrier for IntraLATA toll traffic originated and terminated by your company. The agreement also contemplated that your company would bill and collect the intraLATA toll traffic at BellSouth toll tariff rates for toll calls originated by your end users. As you know, since that time, the environment in which we operate has changed dramatically as a result of the Telecommunication Act of 1996 and market forces.

Over the last several years BellSouth has discussed with a number of the Independent LECs in Tennessee the need to revise the intraLATA toll compensation arrangement. What BellSouth has proposed during those meetings is a change in the formula for compensation that more appropriately aligns with our existing competitive local and toll markets. As a part of that ongoing negotiation, you may recall that we reached agreement last year to update Billing and Collection rates that were contained in the agreement to be more in alignment with today's environment with the understanding that the remaining issues addressed in our letter of July 31, 2000 would be addressed this year.

While this issue has been discussed, no settlement has been reached as of this time. Meanwhile, the economic condition of the telecommunications industry and continuing competitive inroads require that we take some action to align our relationship to these realities. Our ongoing analysis of the intraLATA toll settlements between our companies continues to indicate an imbalance between the old access rates contained in the agreement that BellSouth pays to your company and the market based rates charged to competing toll providers. This was not the intent of the parties. This rate imbalance is precisely the type of material change against which the termination provision was designed to protect the parties. We are currently taking steps to address this issue throughout our nine-state region.

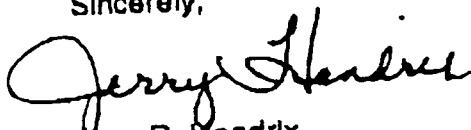
In light of the Tennessee Regulatory Authority's December 29, 2000 Order in Docket No. 00-00523, BellSouth is not invoking the termination provision that the agreement allows at this time. BellSouth is, however, hereby providing notice of its intent to pursue termination of this outdated agreement and negotiation of a new one. We strongly prefer that any new agreement be by negotiation. We, likewise, understand your issues and will support same whenever possible. However, we cannot agree to defer resolution of our overdue issues pending an uncertain resolution of yours. Therefore, in the event that negotiation does not move at an expedited pace toward resolution of this issue, BellSouth will be forced to seek relief from the TRA and any other forum available to us. The TRA's Order on this matter addressed the issue of whether BellSouth could unilaterally terminate certain arrangements without TRA involvement. The Order also stated that it should not be construed to interfere with continued negotiations. In fact, the Order specifically admonishes the parties that

nothing stated [in the Order] should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed, or that this decision extends beyond resolving the immediate questions or the TRA's jurisdiction and authority in this matter.

Initial Order of Hearing Officer, December 24, 2000, Docket No. 00-00523, p. 12-13. Accordingly, in the event we are unable to reach agreement within a reasonable time period regarding a new agreement, BellSouth will petition the TRA for permission to terminate the old agreement. Further, if the parties do not commence good faith negotiations by the later half of April 2002, BellSouth will dispute all charges billed to BellSouth that exceed the revenue reported to BellSouth and will pursue all available remedies. We believe, however, that such action will not be necessary.

We regret that the tone of this letter may be interpreted as harsh, but it merely raises issues we have all been aware of and discussed for some period of time. We must now act to address these inequities and establish an equitable arrangement for both of our companies. We look forward to establishing an equitable arrangement for both of our companies. A template agreement will be sent to you for review by April 12, 2002. BellSouth would like to schedule a meeting to discuss the proposed interconnection agreement with you during the week of either April 15th or April 22nd. Please let us know of your availability. We are also happy to negotiate these issues with you individually or collectively with other companies. If you have any questions, please contact Tim Watts at 205-321-2065.

Sincerely,


Jerry D. Hendrix

K R A S K I N, L E S S E & C O S S O N, L L P
ATTORNEYS AT LAW
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

TELEPHONE (202) 296-8890

TELECOPIER (202) 296-8893

September 4, 2001

Melvin Malone, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Impact of Federal Regulatory Developments on the Provision of
Universal Service in Rural Telephone Company Service Areas

Dear Director Malone:

On behalf of the members of the Coalition of Small LECs and Cooperatives (the "Small Company Coalition;" see attached list of member companies), I am writing to you with respect to issues and concerns that affect the provision of universal service in rural areas of Tennessee. Although I am writing to you because of your role as hearing officer in the "Generic Docket Addressing Rural Universal Service," Docket No. 00-00523, this correspondence addresses matters that are outside of the scope of the issues presently under consideration in that pending proceeding.

Subsequent to the initiation of Docket No. 00-00523 and the filing of initial briefs and responses, the Federal Communications Commission (FCC) has undertaken or initiated action in several proceedings which may have direct and significant impact on the operations of rural incumbent Tennessee local exchange carriers. A common theme resonates through each of these proceedings: the consideration of changes in existing federal rules and regulations that determine how a rural LEC establishes its rates and recovers its investment and expenses related to the provision of universal service.

Set forth below is a brief identification of several of these proceedings and the matters under consideration:

1. Docket No. 96-45, "In the Matter of Federal-State Joint Board on Universal Service," wherein universal service funding of rural company service areas is under consideration.

2. Docket No. 00-256 "In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and

Interexchange Carriers" wherein the appropriate level of interexchange access charges and the recovery of rural LEC interstate costs is under consideration.

3. CC Docket No. 99-68, "In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic" wherein intercarrier compensation for termination of internet traffic and the recovery of associated costs is under consideration together with interim implications for all interconnection services.

4. CC Docket No. 01-92, "In the Matter of Developing a Unified Intercarrier Compensation Regime" wherein the elimination of intercarrier compensation for the provision of interconnection services is under consideration.

Individually and collectively, the outcome of these proceedings at the FCC will, in brief, likely place increasing pressures on rural companies to raise local basic service rates in order to offset the resulting losses in revenues that are presently derived from the provision of interstate interexchange access and interconnection services and federal universal service mechanisms. Pressures to reduce intrastate access charge levels will undoubtedly not only follow, but will likely be exacerbated by arbitrage opportunities resulting from regulatory changes (e.g., resulting disparity in interstate and intrastate access charges will encourage interexchange carriers to avoid intrastate access services).

From the perspective of the Coalition members, their service areas and customers, it appears that the proceedings under consideration in the Federal arena are geared to the facts and circumstances that surround large carriers and large customers. Accordingly, we are witnessing the emergence of a simplistic federal regulatory response that ignores both the historic foundation of the existing federal-state regulatory LEC cost recover system and the current and continuing conditions applicable to the provision of universal service in rural areas.

History taught - and both federal and state regulators traditionally recognized - that, as a matter of both sound public policy and law, the costs of providing universal service in rural areas could not reasonably be fully borne by rates charged directly to rural end user customers. As a constructive alternative, a rate design system evolved whereby a significant portion of these costs have been recovered through a series of mechanisms including access charges, interconnection service charges, and universal service funding. Each of these mechanisms is essentially based upon the recognition that a rural LEC's universal service network is of value not only to the rural customer that resides in the rural service area, but also to all individuals who utilize the public switched network and thereby have the ability to send and receive telecommunications to and from the rural subscriber.

The proposals under consideration at the FCC in the proceedings cited above generally overlook or set aside the public policy value of the existing rate design cost recovery mechanisms in order to address the issues of the larger carriers that do not focus service efforts on the customers residing in rural service areas. The objective of these carriers, with the implicit and explicit encouragement of the FCC, is to eliminate intercarrier charges irrespective of the impact on basic service rates.

On the basis of inquiries and comments from rural carriers throughout the country, our office is convinced that the FCC's consideration of these proposals is already producing a perverse result in rural America by discouraging infrastructure investment. Rural carriers are increasingly

concerned that the policies contemplated by the FCC will severely limit any reasonable opportunity to recover the investments and costs associated with the provision of advanced services in rural areas without inordinate increases in charges to rural subscribers.

Within Tennessee, prior issues and events (e.g., the primary carrier plan issues and changes in carrier settlements) have already established the reality of this concern for the rural LECs. In addition to the intrastate access service issues with which the Authority is already familiar, many of the Coalition members are investigating facts which support the conclusion that connecting carriers may presently engage in interconnection practices that enable them to obtain transport and termination on the rural LEC's network without taking responsibility for compensation of the rural LEC for the provision of its services.

These prior and developing situations, together with the pending FCC proceedings, have resulted in growing concern among the members of the Coalition. Accordingly, the Coalition respectfully requests that the Authority initiate a process to examine and act on these matters. Procedurally, the Coalition is uncertain whether it is most efficient to request the initiation of a new proceeding or to incorporate these issues into Docket No. 00-00523. Because of the nature of these issues and their potential impact on the provision of Universal Service in the rural areas of Tennessee, the Coalition recognizes that it may be appropriate for the TRA to consider the expansion of the scope of Docket No. 00-00523 to incorporate consideration of these matters. In this regard, an additional round of comments could be utilized to freshen the record and to develop proposals to ensure the provision of universal service in rural Tennessee at reasonable rates.

In addition, the Coalition offers to work with TRA staff and other parties to develop and conduct a workshop where all parties could meet in an informal setting to fully explore and consider these issues. While the workshop format would, at minimum, afford a non-adversarial opportunity for parties to fully communicate their concerns and positions, it may also provide a forum that could result in the development of a consensus position that could subsequently be brought to the Authority for approval and implementation in order to serve best the interests of all Tennessee telecommunications users and carriers. This workshop format has been utilized successfully by the TRA to address other matters in a manner that brings parties with various perspectives together to work efficiently on issues such as Docket 00-00873, "Regulations for Telephone Service Providers."

If you should have any questions or need for additional information regarding the federal proceedings addressed above or any other aspect of this letter, please call me at your convenience at 202-296-9055. In the event that you and the TRA elect to proceed with the workshop proposed above, the Coalition member representatives and I would be pleased to offer our assistance in any way that you and the Authority would deem useful. On behalf of the Coalition, your consideration of these matters is greatly appreciated.

Very truly yours,

Stephen G. Kraskin

"The Coalition of Small LECs and Cooperatives"

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Russ Minton, Esquire
Citizens Communications
3 High Ridge Park
Stamford, Connecticut 06905

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
205 Capitol Blvd., #303
Nashville, Tennessee 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Mr. David Espinoza
Millington Telephone Company
4880 Navy Road
Millington, Tennessee 38053

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P.O. Box 198062
Nashville, Tennessee 37219-8062

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
P.O. Box 198062
Nashville, Tennessee 37219-8062

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Wright, Esquire
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, North Carolina 27587

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Dan Elrod, Esquire
Miller & Martin
150 4th Avenue, #1200
Nashville, Tennessee 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, Georgia 30309

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Donald L. Scholes, Esquire
Branstetter, Kilgore, et al.
227 Second Ave., N
Nashville, Tennessee 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Guy M. Hicks, Esquire
Joelle Phillips, Esquire
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, Tennessee 37201-3300

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

R. Douglas Lackey, Esquire
J. Phillip Carver
BellSouth Telecommunications, Inc.
675 W. Peachtree St., NE
Suite 4300
Atlanta, Georgia 30375



JAMES B. KELLEY, ESQUIRE